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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/511,967

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Alistair Royse

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EXAMINER

RODRIGUEZ, CRIS LOIREN

ART UNIT

PAPER NUMBER

3732

MAIL DATE

DELIVERY MODE

03/07/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/511,967	Applicant(s) ROYSE ET AL.	
	Examiner Cary E. O'Connor	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 10, 11 and 13-19 is/are rejected.
- 7) ☒ Claim(s) 6-9 and 12 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 October 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10-20-04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Royce (WO 01/06934). Royce shows a retractor comprising two arms 4,6 connected by a pivot 8 at one end portion such that the arms can be pivoted between a closed position and an open positioning which the arms define a V-shaped configuration. The retractor also comprises means 18 for retaining arms in the open position. The arms provide a series of abutment edges (notches form at the abutment edges of the sleeves) 40, 46 spaced in the longitudinal direction of the arm for engaging the mounting portion 48 of a retractor blade 16. As to claims 4, 5 and 11, the mounting portions of the blades are able to freely rotate about the axis of the arm (see Fig. 5) and are able to be locked to the arm in a selected angular position. As to claim 10, the arm has a circular cross-section, as can be seen in Figures 3-5.

Claims 1-3, 6, 13 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Daniel (5,297,538). Daniel shows a retractor comprising two arms 2,4 connected by a pivot 6 at one end portion such that the arms can be pivoted between a closed position and an open positioning which the arms define a V-shaped configuration. The retractor also comprises means 30 for retaining arms in the open

position. The arms provide a series of abutment edges 54 spaced in the longitudinal direction of the arm for engaging the mounting portion 14 of a retractor blade 16.

Regarding claims 13 and 17, the mounting portion surrounds the arm.

Claims 13 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by LeVahn et al (4,949,707). LeVahn shows a retractor comprising two arms 112, 114 connected by a pivot 100 at one end portion such that the arms can be pivoted between a closed position and an open positioning which the arms define a V-shaped configuration. The retractor also comprises means 106 for retaining arms in the open position. The retractor also includes a blade 13 having a mounting portion 120 which at least partially surrounds the arm and is lockable to the arm. As to claim 15, the mounting portion is freely rotatable about the arm.

Claims 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Ray et al (5,000,163). Ray shows a retractor having two arms 62, 62 for removably mounting a blade 90 having a mounting portion 85. The mounting portion at least partially surrounds the arm (see Figures 5). The blade is lockable to the arm against longitudinal displacement. As to claims 18 and 19, the blade is lockable to the arm against longitudinal displacement by skewing the mounting portion relative to the arm (Figures 4 and 5).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ray et al (5,000,163) in view of LeVahn et al (4,949,707). The retractor of Ray includes the elements of the claimed invention except for the arms being pivotably connected at one end so as to form a V-shaped configuration in an open position. The frame formed by the arms is in a fixed configuration. LeVahn shows a retractor comprising two arms 112, 114 connected by a pivot 100 at one end portion such that the arms can be pivoted between a closed position and an open positioning which the arms define a V-shaped configuration. The retractor also comprises means 106 for retaining arms in the open position. It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the arms of Ray in the configuration taught by LeVahn, so that the configuration of the frame may be adjusted to a particular surgical procedure. As to claim 16, the blade of Ray is lockable to the arm against longitudinal displacement by skewing the mounting portion relative to the arm (Figures 4 and 5).

Allowable Subject Matter

Claims 6-9, 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Objections

Claim 2 is objected to because of the following informalities: In line 6, "aims" should be changed to --arms--. Appropriate correction is required.

Specification

The disclosure is objected to because of the following informalities: Reference numeral 14 refers to a pinion (page 5, line 9) and notches or grooves (page 5, line 22).

Appropriate correction is required.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "14" has been used to designate both a pinion (Figure 1) and notches (Figure 2). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cary E. O'Connor whose telephone number is 571-272-4715. The examiner can normally be reached on M-Th 7:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on 571-2724964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Cary E. O'Connor/
Primary Examiner, Art Unit 3732

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